

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TPN PROPERTIES, LLC,

Plaintiff,

v.

HOME-OWNERS INSURANCE
COMPANY,

Defendant.

Civil Action File No. _____

NOTICE OF REMOVAL

COMES NOW HOME-OWNERS INSURANCE COMPANY, Defendant in the above-styled action, and within the time prescribed by law, files this Notice of Removal and respectfully shows this Honorable Court the following:

1.

Plaintiff TPN Properties, LLC has filed suit against Defendant Home-Owners Insurance Company (“Home-Owners”) in the State Court of Fulton County, Georgia, which is in the Atlanta Division of the Northern District of Georgia. The suit is styled as above and numbered Civil Action File No. 21EV000249 in that court. This suit is for a sum in excess of \$75,000.00, or the object of this suit exceeds said sum, exclusive of interest and costs.

2.

Plaintiff TPN Properties, LLC is a domestic limited liability company organized and existing under the laws of the state of Georgia with its principal place of business in the state of Georgia, is a citizen of the state of Georgia, and was a citizen of the state of Georgia on the date of the filing of the aforesaid civil action and has been thereafter.

3.

The sole member of Plaintiff TPN Properties, LLC is now the Estate of Thomas R. Nicholson Sr., who passed away in February of 2018 while a citizen and domiciliary of the state of Georgia and while he was the sole member of Plaintiff. The Estate of Thomas R. Nicholson Sr. is formed under the laws of the state of Georgia, with probate filed in Henry County, Georgia, and therefore is also a citizen and domiciliary of the state of Georgia. At the time of his death, Thomas R. Nicholson Sr. was a resident and domiciliary of Henry County, Georgia, and he had the intention to remain in Georgia and call Georgia his home. *See, e.g., King v. Cessna Aircraft Co.*, 505 F.3d 1160, 1170 (11th Cir. 2007) (“Where an estate is a party, the citizenship that counts for diversity purposes is that of the decedent, and she is deemed to be a citizen of the state in which she was domiciled at the time of her death.”). Moreover, the Estate is a legal creation established under the laws of

the state of Georgia and established following Thomas R. Nicholson Sr.'s death. Thus, the sole member of Plaintiff is a citizen and domiciliary of the state of Georgia.

4.

Defendant Home-Owners is a corporation organized and existing under the laws of the state of Michigan with its principal place of business in the state of Michigan, is a citizen of the state of Michigan, and was a citizen of the state of Michigan on the date of the filing of the aforesaid civil action and has been thereafter. Home-Owners is not a citizen of the state of Georgia and was not a citizen of the state of Georgia on the date of the filing of the aforesaid civil action and has not been thereafter.

5.

The amount in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs.

6.

The aforementioned suit is a civil action over which this Court has original jurisdiction under the provisions of Title 28 of the United States Code, § 1332, and, accordingly, is one which may be removed to this Court by Defendant pursuant to the provisions of Title 28 of the United States Code, § 1441, in that it is a civil

action in which the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, and is between citizens of different states. Accordingly, removal to this Court is proper.

7.

Defendant shows that suit was instituted on January 12, 2021 in the State Court of Fulton County, and Defendant was served with the summons and complaint on January 19, 2021. Defendant further shows that this Notice of Removal is filed within thirty (30) days of the date of service upon Defendant or other notice.

8.

Defendant has attached hereto copies of all process, pleadings, and orders served upon it in this case, such copies being marked collectively as Exhibit A.

9.

Defendant has given written notice of the filing of this Notice of Removal to Plaintiff, a copy of said Notice of Filing Removal is attached hereto as Exhibit “B”. Defendant has filed a written notice with the Clerk of the State Court of Fulton County, State of Georgia, a copy of said notice being attached hereto as Exhibit “C” and made part hereof.

WHEREFORE, Defendant prays that this case be removed to the United States District Court for the Northern District of Georgia, Atlanta Division.

This 17th day of February, 2021.

Respectfully submitted,

KENDALL | MANDELL, LLC

/s/ Michael C. Kendall

Michael C. Kendall

Georgia Bar No. 414030

Michael C. Kendall, II

Georgia Bar No. 510402

Counsel for Defendant

3152 Golf Ridge Blvd., Suite 201
Douglasville, Georgia 30135
Telephone: (770) 577-3559
Facsimile: (770) 577-8113
mckendall@kendallmandell.com
michaelkendall@kendallmandell.com

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served or caused to be served a copy of the within and foregoing **NOTICE OF REMOVAL** in this matter by electronically filing the same with the Court via the CM/ECF system, and U.S.

Mail, postage prepaid to the following counsel of record:

Stephen V. Kern, Esq.
C. Joseph Hoffman, Esq.
KITCHENS KELLEY GAYNES, P.C.
Glenridge Highlands One, Suite 800
5555 Glenridge Connector
Atlanta, Georgia 30342

John W. Clark, IV, Esq.
CLARK LAW FIRM, PC
The Landmark Center, Suite 600
2100 First Avenue North
Birmingham, Alabama 35203

This 17th day of February, 2021.

/s/ Michael C. Kendall
Michael C. Kendall